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vs.)
)
MATTHEW J. PLATKIN, in his official)
capacity as Attorney General of)
New Jersey; and PATRICK J.)
CALLAHAN, in his official capacity)
as Superintendent of the New Jersey)
Division of State Police,)
Defendants.)
and)
)
NICHOLAS P. SCUTARI, President of)
the New Jersey Senate, and)
CRAIG J. COUGHLIN, Speaker of the)
New Jersey General Assembly,)
Intervenors-Applicants)

CIVIL ACTION NUMBER:
1:22-cv-07463-RMB-AMD

STATUS CONFERENCE

Via Zoom Videoconference

CONSOLIDATED CASES

B E F O R E: THE HONORABLE RENÉE MARIE BUMB,
CHIEF UNITED STATES DISTRICT JUDGE

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

A P P E A R A N C E S: (Continued)

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Arthur Roney, The Courtroom Deputy

Roberta Costigan, Judicial Assistant

1 (PROCEEDINGS, held via remote Zoom videoconferencing
2 before The Honorable Renée Marie Bumb, Chief United States
3 District Judge, at 2:30 p.m. as follows:)

4 THE COURTROOM DEPUTY: Judge is coming in.

5 THE COURT: Hello.

6 THE COURTROOM DEPUTY: Good afternoon, Judge.

7 THE COURT: Are we all set?

8 THE COURTROOM DEPUTY: Yes. And Mr. Sokol for the
9 intervenors has someone else coming in, but we're waiting for
10 him to come in.

11 MR. SOKOL: Yes. Your Honor, Mr. Kologi, who is
12 co-counsel, for some reason, his emails were not on the
13 distribution list.

14 THE COURT: Oh, okay. Do we need to wait?

15 Mr. Sokol, I can see the top of your head, but I
16 can't see the rest of you. Do you think you can --

17 THE COURTROOM DEPUTY: Pull your screen down.

18 THE COURT: There we go. Yeah.

19 Are you okay? Should we wait or what do you think?

20 (Pause.)

21 MR. SOKOL: I'm sorry. My apologies, Judge.

22 THE COURT: Yeah. No worries. I think by the time I
23 hear who's on the call, we may have your colleague joining us.

24 Okay. So we are on the record. My court reporter,
25 there he is, okay. 22-7463 and 22-7464. So let me start with

1 appearances, please. I'll start with Mr. Jensen. I see you.

2 MR. JENSEN: Okay. Good afternoon, Your Honor.

3 David Jensen for the plaintiffs in Koons.

4 THE COURT: Good afternoon.

5 MR. SCHMUTTER: Good afternoon, Your Honor. Daniel
6 Schmutter from the firm of Hartman & Winnicki for the Siegel
7 plaintiffs.

8 THE COURT: Okay. Good afternoon.

9 MS. CAI: Good morning, Chief Judge. Angela Cai on
10 behalf of the Attorney General, Colonel Callahan, and the
11 Sussex County Prosecutor.

12 THE COURT: All right. Afternoon.

13 MR. COHEN: Thank you, Your Honor. Alan Cohen
14 Atlantic County Law Department for the defendant, William
15 Reynolds, Atlantic County Prosecutor.

16 THE COURT: All right. Afternoon.

17 MR. KOLOGI: Good afternoon, Your Honor. Edward J.
18 Kologi, Kologi, Simitz, co-counsel with Mr. Sokol's firm,
19 representing the Legislature Intervenors.

20 THE COURT: Okay. All right.

21 MR. KOLOGI: And my partner, Michael Simitz, is in
22 the process of logging in, so he'll be on, too.

23 THE COURT: Okay.

24 MR. GOLDBERG: Your Honor, Howard L. Goldberg,
25 Assistant County Counsel on behalf of Prosecutor Grace Macaulay

1 for Camden County.

2 THE COURT: Okay. Afternoon.

3 MR. SOKOL: Your Honor, Leon Sokol, the firm of
4 Cullen and Dykman representing the presiding officers,
5 defendants -- the Intervenorors in this matter.

6 THE COURT: All right. Afternoon. And is it okay,
7 Mr. Sokol, or Mr. Kologi, if I go forward without your
8 colleague?

9 MR. SOKOL: I'm sorry, Your Honor. I didn't hear
10 what you said.

11 THE COURT: Is it okay if I start without your
12 colleague? You're waiting for another one of your colleagues?

13 MR. SOKOL: No. No. Mr. Kologi has joined the
14 conference so we can start.

15 THE COURT: Oh, I thought he had mentioned someone
16 else was going to join, okay.

17 All right. Mr. Schmutter, you have asked for the
18 conference call and you have gotten it.

19 MR. SCHMUTTER: Thank you, Judge.

20 We simply -- we saw the ex parte Order granting the
21 motion to intervene, and we had wanted to put an opposition.
22 And so we understand that the Court will entertain an expedited
23 motion for reconsideration, and I guess the issue is briefing
24 and timing. And I know that on behalf of our plaintiff, we can
25 put in our papers on Monday, if that's okay with the Court.

1 And I know David and I discussed it, but I'm not
2 going to speak for him, you know, since he's here.

3 THE COURT: So here's what I have to say,
4 Mr. Schmutter. Maybe we can have a conversation about it, and
5 maybe I can dissuade you from filing your expedited motion to
6 reconsider. I can't prevent you from filing it.

7 To my way of thinking, the more that I have before me
8 to make the right decision, however I see it, the better. As
9 long as I find that it's not clogging my docket or as long as I
10 find that it's not slowing things down -- and the intervenors
11 have assured me that that won't be the case -- I don't see the
12 harm.

13 What can you say to that?

14 MR. SCHMUTTER: Well, Judge, we're concerned about
15 the intervenors interfering with scheduling. And I don't mean
16 interfering in a malicious way. I'm just saying, the more is
17 not necessarily the merrier. The intervenors don't have a
18 separate litigation interest. Intervenors are legislators.
19 Legislators generally -- or legislative bodies don't generally
20 have an interest in this kind of litigation. Really, I mean,
21 the position that they would have to take in order to be --

22 THE COURT: Slow down, Mr. Schmutter, please. You're
23 actually faster on a Zoom than you are in the courtroom, so
24 that tells me from now on in person. I'm just kidding.

25 MR. SCHMUTTER: Well, they don't call it "Zoom" for

1 nothing, Judge.

2 (Laughter.)

3 MR. SCHMUTTER: I apologize.

4 Really, for them to intervene, they'd really have to
5 show that the Attorney General is not adequately representing
6 the interests of the State of New Jersey. They don't have a
7 separate interest from the State of New Jersey. So all they're
8 doing is adding issues of coordination, issues of scheduling.
9 They may take a -- they may take procedural positions different
10 than the Attorney General. They may take substantive --

11 THE COURT: Well, how about we have this conversation
12 because I'm not going to let that happen, okay?

13 I understood from the intervenors' motion that really
14 what they want to do is they really want to -- they want to
15 have a voice. They want to be able to -- and Ms. Cai is doing
16 an extraordinary job of representing the AG, and no one would
17 say that she's not. And that's clearly not what they're
18 saying. They just want to have a voice. I have no problem
19 with them having a voice. I do have a problem with them
20 clogging the docket or slowing things down.

21 So how about we say this: They don't partake in the
22 scheduling. They simply abide by it.

23 Are you happy with that?

24 MR. SCHMUTTER: I certainly think that helps.

25 THE COURT: Okay. So --

1 MR. SCHMUTTER: But I -- you know, for example,
2 aren't they really more appropriate for an amicus? I mean, if
3 they want to be heard on an issue that's different than what
4 the State of New Jersey is arguing, that's what an amicus does.
5 An amicus --

6 THE COURT: But, okay. So, I mean, I call it
7 "permissive intervention." You call it "amicus." I don't
8 really care what we call it. I think at the end of the day, we
9 get to the same place. And that's really how I saw it, which
10 is why I, to be perfectly forthright, Mr. Schmutter, I really
11 didn't see the harm. I'll hear what they have to say. I think
12 it's better for all of us concerned that this Court get it
13 right.

14 And so if your concern is, and I can dissuade you
15 from filing a motion to reconsider, if your concern is, is that
16 they are going to interfere with the scheduling, then I'm going
17 to say no. They're going to piggyback on what Ms. Cai says,
18 okay? They're not going to quarrel with it. Ms. Cai is going
19 to control, because that's how it was represented to me, right,
20 Mr. Kologi, or Mr. Sokol?

21 MR. KOLOGI: That's correct, Your Honor.

22 Judge, there's one thing I want to point out. We're
23 not here today defending our motion. You've already granted
24 the motion. He obviously shifts, you know, to --

25 THE COURT: Right. But he wants to file a motion to

1 reconsider. And in fairness to Mr. Schmutter, I didn't give
2 him an opportunity to oppose it because for the reasons I'm
3 already articulating.

4 MR. KOLOGI: I understand.

5 THE COURT: But I'm giving you now -- now that we're
6 all together -- I'm giving you, Mr. Kologi, an opportunity to
7 represent to me that you're going to just follow the scheduling
8 that Ms. Cai works with Mr. Schmutter and Mr. Jensen on. Fair
9 enough?

10 MR. KOLOGI: Judge, I think we -- that's absolutely
11 correct. And I believe we stated that in our original papers;
12 that we were not going to in any way slow this down or be an
13 impediment to whatever Your Honor prescribes.

14 THE COURT: Right. Okay. So I think that should
15 take care of it, Mr. Schmutter, right?

16 MR. SCHMUTTER: Judge, if they -- I mean, this all
17 certainly helps. If they can -- if it can be clear that
18 they're not going to differ from the Attorney General's Office
19 in things like procedure and strategy and scheduling. You
20 know, if the Attorney General -- if we have a deal with the
21 Attorney General that certain things are either going to happen
22 or not going to happen, I wouldn't want to see the intervenors
23 say, well, we disagree with the Attorney General so we want
24 this other thing. That's --

25 THE COURT: Fair enough. Here's how it's going to go

1 from this day forward, okay?

2 The plaintiffs are going to have conversations with
3 Ms. Cai, Mr. Goldberg, although I think Mr. Goldberg and -- who
4 am I missing? Mr. Cohen, I think are -- I think Ms. Cai is
5 taking the laboring oar here. You're going to have
6 conversations with her. You folks are going to work out the
7 schedule. The intervenors are going to say, okay, got it.
8 That's how it's going to go. They're going to follow it.
9 That's what they represented to me when they filed their
10 motion, and so I took them at face value. Mr. Kologi has
11 reiterated it today, and I appreciate that.

12 So they're not going to really have a say about
13 scheduling. And really, quite frankly, you shouldn't even be
14 talking to them about scheduling; talk to Ms. Cai.

15 You okay with that?

16 MR. SCHMUTTER: That's certainly great.

17 I guess there's one other issue, which hopefully
18 shouldn't be an issue. This is a little bit farther down the
19 road. But the other thing I would want to make sure is that
20 since they're intervening as defendants, that they're
21 similarly -- if we are a prevailing party under Section 1988, I
22 would want them to be liable for counsel fees. So what I
23 wouldn't want to see, for example, and I'm not saying they're
24 going to do this, but I just want to make sure, I wouldn't want
25 to see the State say, well, the fees -- you're a prevailing

1 party. The fees that you're applying for on this motion, well,
2 that was -- you were defending against the intervenors so we're
3 not liable for that. And then I wouldn't want the intervenors
4 to say, well, we're not subject to counsel fees, therefore, you
5 don't get counsel fees on that.

6 I would want us all to be kind of in agreement that
7 if they're coming in the case as defendants, they don't get to
8 make that argument. Fees are fees. Everything that counts,
9 counts. And I wouldn't want that kind of -- that kind of, sort
10 of, argument where we're getting kind of whipsawed by that.
11 I'm not saying they're going to do that. I just don't want to
12 take that risk. We might as well all be in agreement up front
13 that if that happens --

14 THE COURT: I think that comes under the category of
15 needless anxiety.

16 MR. SCHMUTTER: Okay. I mean, that's fair, Judge.
17 As long as we're all here on the call and we're all talking
18 about it, I'm okay with that as long as that's out in the open.

19 THE COURT: Yeah.

20 MR. SCHMUTTER: I don't know if David has anything to
21 add or any thoughts about it, but --

22 THE COURT: I think they would be hard-pressed to
23 sort of point the fingers at each other, so, yeah. So I think
24 we're good. I think we're good. I think I have dissuaded you
25 not to file your motion to reconsider. And you folks, I'm

1 waiting for you folks to propose something to me.

2 So, Mr. Jensen, Mr. Schmutter, and Ms. Cai, you folks
3 will work on that and propose something to me.

4 MS. CAI: Your Honor, I have, as of last Friday
5 morning, proposed a schedule to the plaintiffs, which I have no
6 reason to think that the other defendants, including
7 intervenors, have any problem with.

8 In the interest of -- since we're all here, I haven't
9 really heard an objection to the schedule I proposed, but
10 there's been a wrinkle in terms of what Mr. Schmutter's clients
11 want to do in between that time. So it would be helpful to
12 everybody if I may just sort of lay out the issues here and
13 perhaps we can reach a resolution with the Court.

14 THE COURT: I'd rather not be part of that; that you
15 folks can try to work it out. If you can't work it out, then
16 put it on the docket in a letter form, and I will give you the
17 dates that I think are appropriate, okay?

18 MS. CAI: Okay. Will do, Your Honor.

19 MR. SCHMUTTER: Yeah. Judge, Angela and I will talk,
20 and I think we'll work it out.

21 THE COURT: Okay. I can leave and you folks can stay
22 on if that will help.

23 MR. SCHMUTTER: We'll talk.

24 MS. CAI: That's okay, Your Honor. We can do our own
25 Zoom. Thank you.

1 MR. SCHMUTTER: We'll talk it out, Judge. We'll get
2 it right.

3 THE COURT: I promise, I won't listen in.

4 (Laughter.)

5 THE COURT: All right. I think we're all good. Good
6 to see you all.

7 MR. GOLDBERG: Thank you, Your Honor.

8 MR. JENSEN: Thank you, Your Honor.

9 MS. CAI: Thank you, Your Honor.

10 MR. SCHMUTTER: Thank you, Judge. You've been very
11 helpful. I appreciate it.

12 MR. SOKOL: Your Honor, are we left with the
13 plaintiffs are going to file a motion for reconsideration or
14 are we finished with that and the Order stands?

15 THE COURT: No. I think I persuaded Mr. Schmutter
16 that he doesn't need to.

17 MR. SCHMUTTER: Yeah. This was very helpful, Judge.
18 Thank you.

19 THE COURT: Okay. Good.

20 MR. SOKOL: Thank you, Your Honor.

21 THE COURT: All right. Good to see you all. Be
22 well.

23 MR. KOLOGI: Thank you.

24 MR. COHEN: Thank you.

25 MR. SCHMUTTER: Thank you, Judge.

(Proceedings concluded at 2:45 p.m.)

FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/S/John J. Kurz, RDR-RMR-CRR-CRC

February 3, 2023

Court Reporter/Transcriber